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13 Attorneys for Plaintiff,
14 Amaka Donn

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 Amaka Donn,

19 Plaintiff,

20 vs.

21 Jenny Craig, Inc.,
22

23 Defendant.
24

Case No.:

COMPLAINT

JURY TRIAL DEMANDED

1 For this Compliant, Plaintiff, Amaka Donn, by undersigned counsel, states as
2 follows:
3

4 **INTRODUCTION**

5 1. Plaintiff brings this complaint for damages resulting from the illegal
6 actions of Jenny Craig, Inc. (“Jenny Craig” or “Defendant”). Defendant sent
7 unauthorized text messages to Plaintiff’s cellular telephone in violation of the
8 Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (the “TCPA”).
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10 2. Wireless spam is a growing problem in the United States. In April 2012,
11 the Pew Research Center found that 69% of texters reported receiving unwanted spam
12 text messages, while 25% reported receiving spam texts weekly.
13 <http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet/> (last visited
14 February 9, 2016); *see also* Nicole Perlroth, *Spam Invades a Last Refuge, the*
15 *Cellphone*, N.Y. Times, April 8, 2012, at A1 (“In the United States, consumers
16 received roughly 4.5 billion spam texts [in 2011], more than double the 2.2 billion
17 received in 2009 . . .”).
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21 3. Jenny Craig is an American weight loss, weight management, and
22 nutrition company. The company has more than 700 weight management centers in
23 Australia, the United States, Canada, New Zealand, and Puerto Rico. It has developed
24 a sophisticated multi-platform marketing program to promote its products.
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1 15. The FCC has clarified that text messages qualify as “calls” under the
2 TCPA:
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4 We affirm that under the TCPA, it is unlawful to make any call
5 using an automatic telephone dialing system or an artificial or
6 prerecorded message to any wireless telephone number. Both
7 the statute and our rules prohibit these calls, with limited
8 exceptions, “to any telephone number assigned to a paging
9 service, cellular telephone service, specialized mobile radio
10 service, or other common carrier service, or any service for
11 which the party is charged.” This encompasses both voice
12 calls and text calls to wireless numbers including, for example,
13 short message service (SMS) calls, provided the call is made to
14 a telephone number assigned to such service.
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19 *In re Rules and Regulations Implementing the Telephone Consumer Protection Act*
20 *of 1991*, Report and Order, 18 FCC Rcd. 14014, 14115 (July 3, 2003); *see Satterfield v.*
21 *Simon & Schuster, Inc.*, 569 F.3d 946, 953 (9th Cir. 2009).
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23 **FACTUAL ALLEGATIONS**

24 16. Jenny Craig sent automated text messages to Plaintiff’s cellular telephone
25 number, XXX-XXX-1401 (the “Number”).
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1 17. The texts were telemarketing. They advertised sales and promotions
2 available on Jenny Craig's website.
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4 18. Defendant placed the text messages from an abbreviated phone number
5 known as an SMS short code licensed and operated by Jenny Craig.
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7 19. Defendant's text messages received by Plaintiff were fully automated.
8 The content of the messages received by Plaintiff was not individualized to the
9 Plaintiff in any way. The exact same text messages were automatically sent to
10 thousands of consumers as a part of Defendant's pre-planned telemarketing campaign.
11

12 20. The text messages sent to Plaintiff's Number by Jenny Craig advertised
13 the availability of Defendant's products and services and thus constitute
14 'telemarketing.'
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16 21. Any text messages that Plaintiff sent to Defendant did not provide
17 Defendant prior express written consent to send Plaintiff automated calls as required
18 by the TCPA. Plaintiff was not given clear and conspicuous disclosure that she was
19 consenting to receive fully automated text messages to her cellular phone.
20

21 22. The text messages sent to Plaintiff's Number were made with an ATDS
22 as defined by 47 U.S.C. § 227(a)(1). The ATDS has the capacity to store or produce
23 telephone numbers to be called, using a random or sequential number generator.
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1 DATED: February 11, 2019

TRINETTE G. KENT

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3 By: /s/ Trinette G. Kent

4 Trinette G. Kent, Esq.

5 Lemberg Law, LLC

6 Attorney for Plaintiff, Amaka Donn
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